

## **ELECTRONIC DISCOVERY GUIDELINES**

1. **Existence of electronic information.** With respect to the discovery of electronic information, prior to the Fed.R.Civ.P. 26(f) conference, counsel should become knowledgeable about their clients' information management systems and their operation, including how information is stored and retrieved. In addition, counsel should make a reasonable attempt to review their clients' electronic information files to ascertain their contents, including archival, back-up, and legacy data (outdated formats or media).
2. **Duty to disclose.** Disclosures pursuant to Fed.R.Civ.P. 26(a)(1) must include electronic information. To determine what information must be disclosed pursuant to this rule, counsel shall review with their clients the clients' electronic information files, including current files as well as back-up, archival, and legacy computer files, to determine what information may be used to support claims or defenses (unless used solely for impeachment). If disclosures of electronic information are being made, counsel shall also identify those individuals with knowledge of their clients' electronic information systems who can facilitate the location and identification of discoverable electronic information.
3. **Duty to notify.** A party seeking discovery of computer-based information shall notify the opposing party of that fact immediately, and, if known at the time of the Fed.R.Civ.P. 26(f) conference, shall identify as clearly as possible the categories of information that may be sought.
4. **Duty to meet and confer regarding electronic information.** During the Fed.R.Civ.P. 26(f) conference the parties shall confer regarding the following matters:
  - (a) **Computer-based information in general.** Counsel shall attempt to agree on steps the parties will take to segregate and preserve computer-based information in order to avoid accusations of spoliation. Counsel shall also attempt to agree on the steps the parties will take to comply with the decisions and rules requiring the preservation of potentially relevant information after litigation has commenced.

**(b) E-mail information.** Counsel shall attempt to agree on the scope of e-mail discovery and e-mail search protocol.

**(c) Deleted information.** Counsel shall attempt to agree on whether deleted information still exists, the extent to which restoration of deleted information is needed, and who will bear the costs of restoration.

**(d) Back-up and archival data.** Counsel shall attempt to agree on whether back-up and archival data exists, the extent to which back-up and archival data is needed, and who will bear the cost of obtaining such data.

**(e) Costs.** Counsel shall discuss the anticipated scope, cost, and time required for disclosure or production of data beyond what is reasonably available to the parties in the ordinary course of business, and shall attempt to agree on the allocation of costs.

**(f) Format and media.** Counsel shall discuss and attempt to agree on the format and media to be used in the production of electronic information.

**(g) Privileged material.** Counsel shall attempt to reach an agreement regarding what will happen in the event privileged electronic material or information is inadvertently disclosed.